IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 3941 of 2005

Between:

M/s. Sai Ganesh Agencies, Gajwel, Medak District, rep by its Proprietor, Drwaraka Prasad Joshi, S/o. Chogalal Joshi, aged about 36 years

..... PETITIONER

AND

1 Commercial Tax Officer, Siddipet Circle, Medak District.
2 Appellate Deputy Commissioner (CT), Sec-bad Division, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or writs, order or direction declaring the orders dated 23-11-2004 in check Memo Nos. 598/04, 599/04 & 600/04 passed by the 2nd respondent in the appeals filed by the petitioner as illegal, arbitrary and without jurisdiction and consequently set-a-side the same and further direct the 2nd respondent to hear and dispose of the appeals filed by the petitioner after affording opportunity of personal hearing and also in accordance with the provisions of the APGST Act.

Counsel for the Petitioner: MR.SHAIK JEELANI BASHA

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court at the admission stage made the following :

ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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In the instant writ petition, the petitioner is assailing the orders dated 23-11-2004, passed by the 2nd respondent in Appeals G.I.Nos.598/04, 599/04 & 600/04, filed by the petitioner, as illegal, arbitrary and without jurisdiction.

2. Impugned order was passed rejecting the petitioner's appeals on the ground of non-payment of 12.5% disputed tax, which has to be paid to maintain the appeal before the Appellate Deputy Commissioner.

3. In the instant writ petition impugned order has now been sought to be assailed mainly on the ground that it opposed to principles of natural justice. In view of the same, without adverting to the merits of the case, we are inclined to dispose of the present writ petition having regard to the fact that the appeal sought to be filed by the petitioner was dismissed without affording an opportunity of personal hearing before passing the order of dismissal. We are of the considered view that the principles of natural justice will require a hearing before passing appropriate orders by the authorities. At the same time, the requirement as regards the deposit of 12.5% of the disputed tax, which is a condition precedent for maintaining the appeal, cannot be dispensed with and in that view of the matter the rejection cannot be said to be illegal.

4. Under the circumstances, we are inclined to dispose of the present writ petition with the following directions so as to maintain the equity:

The petitioner shall deposit 12.5% of the disputed tax, which is a condition precedent for maintaining the appeal, within one week from the date hereof and on such deposit 2nd respondent shall hear the appeals by affording every opportunity to the petitioner and dispose of the same in accordance with law.

5. With the above directions, the writ petition stands disposed of at the threshold.

M.H.S.ANSARI, J.

T.Ch.SURYA RAO, J.

Dated 15-03-2005.

skmr

..... REGISTRAR

To

1 The Commercial Tax Officer, Siddipet Circle, Medak District.
2 The Appellate Deputy Commissioner (CT), Sec-bad Division, Hyderabad.

3 2 CCs to G.P. for Commercial Taxes, High Court Buildings,

Hyderabad (OUT).

4 2 CD copies.